UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	**CRIMINAL NO. *-P-H**
	)	
*	)	
	)	
DEFENDANT	)	

JURY INSTRUCTIONS

These instructions will be in three parts: first, general rules that define and control your duties as jurors; second, definitions of the elements of the offenses charged in the Indictment—in other words, what the government must prove to make its case; and third, some rules for your deliberations in the jury room and the return of your verdict. You may take these instructions with you to the jury room.

I. GENERAL RULES CONCERNING JURY DUTIES

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. The determination of the law is my duty as the judge. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. You must not be influenced by personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence and according to the law. You took an oath promising to do so at the beginning of the case.

You must follow all of my instructions and not single out some and ignore others; they are all equally important. You must not read into these instructions, or into anything I may have said or done, any suggestion as to what verdict you should return—that is a matter entirely for you to decide.

PRESUMPTION OF INNOCENCE

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until *his guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone is sufficient to acquit a defendant unless you are satisfied of *his guilt beyond a reasonable doubt after considering all the evidence. The defendant before you, *[name], has the benefit of that presumption throughout the trial and you are not to convict the defendant unless you are persuaded of *his guilt beyond a reasonable doubt. ***OR** Each of the defendants—*[names]—has the benefit of that presumption throughout the trial and you are not to convict a particular defendant unless you are persuaded of *his guilt beyond a reasonable doubt.

The law does not compel any defendant in a criminal case to take the witness stand and testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that *[defendant] did not testify. For any of you to indulge such an inference or suggestion would be most improper; indeed, it would be a violation of your oath as a juror. *[defendant] has a constitutional right not to testify.

PROOF BEYOND A REASONABLE DOUBT

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to *[defendant]. It is always the government' s burden to prove each of the elements of the crimes charged beyond a reasonable doubt. *[defendant] has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of an offense charged against *[defendant]. Before you may convict *[defendant], the government's evidence must satisfy you of his guilt beyond a reasonable doubt of the particular offense charged.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to *[defendant's] guilt of a particular offense, it is your duty to acquit *him of that offense. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of *[defendant's] guilt of a particular offense, you should vote to convict *him of that offense.

EVIDENCE

The guilt of *[defendant] of the offense *or offenses charged against *him must be established upon the evidence and the reasonable inferences to be drawn from that evidence. **[**Do not concern yourselves with whether other people have or have not been indicted. You are called upon to decide only whether *[defendant] is guilty or not guilty of the offense charged.**]** **[**Likewise, do not concern yourselves with what sentence may confront a defendant who is convicted. That is for the judge to determine following Sentencing Guidelines approved by Congress.**]**

The evidence from which you are to decide what the facts are consists of the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits that have been received into evidence; and any facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as fact to be given whatever weight you choose.

Although you may consider only the evidence presented in the case, you are not limited to the bald statements made by the witnesses or contained in the documents. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts that you find to have been proven such reasonable inferences as you believe are justified in the light of experience.

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have

related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.

You have heard the testimony of **[witness(es)]**. *He/She/They provided evidence under agreements with the government; *[and/or] *participated in the crime charged against [defendant]; *[and/or] *received money [or . . .] from the government in exchange for providing information. Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of *this/these individual*s with particular caution. *He/She/They may have had reason to make up stories or exaggerate what others did because *he/she/they wanted to help *himself/herself/themselves.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a fact or chain of facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

WHAT IS NOT EVIDENCE

Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. *Arguments and statements by lawyers are not evidence*. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as

you remember them differ from the way the lawyers state them, your memory of them controls.

2. *Questions and objections by lawyers are not evidence*. Lawyers have a duty to their clients to object when they believe a question or exhibit is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

3. *Anything that I have excluded from evidence and instructed you to disregard is not evidence*. You must not consider such items.

4. *Anything you may have seen or heard when the court was not in session is not evidence*. You are to decide the case solely on the evidence received at trial.

5. *The Indictment is not evidence*. This case, like most criminal cases, began with an Indictment. You will have that Indictment before you in the course of your deliberations in the jury room. That Indictment was returned by a grand jury, which heard only the government's side of the case. I caution you, as I have before, that the fact that this defendant has had an Indictment filed against *him/her is no evidence whatsoever of *his/her guilt. The Indictment is simply an accusation. It is the means by which the allegations and charges of the government are brought before this court. The Indictment proves nothing.

II. ELEMENTS OF THE OFFENSES CHARGED

I come now to the second part of my instructions, the elements of the offenses the government has charged and what it must prove to make its case. In general, the Indictment charges that the offenses were committed "on or about" certain dates. It is sufficient if the government proves beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates charged.

PREPARE FOR INSERTION HERE YOUR PROPOSED INSTRUCTIONS CONCERNING THE ELEMENTS OF THE OFFENSE(S) AND ANY AFFIRMATIVE DEFENSES

First consult the Criminal Pattern Jury Instructions for the First Circuit. The official version from 1998 is available in pamphlet form from West Publishing Company. Judge Hornby's update is available on-line at the District of Maine Web Site, www.med.uscourts.gov. If you disagree with the appropriateness of the pattern charge, prepare your own version, but explain why you disagree with the pattern charge. If you have a matter not covered by the pattern charge, consult pattern charges from other Circuits, as well as The Federal Judicial Center's pattern charge, but research First Circuit caselaw for any differences. Judge Hornby usually prefers these pattern charges because they tend to be in simpler language and therefore more easily understood by lay jurors. You may also consult the standard academic sources for jury instructions, including O'Malley, Grenig; Sand, Siffert, etc. You should, of course, consult the pertinent caselaw from the Supreme Court and the First Circuit in particular, but bear in mind that language used by an appellate court may need translating for a lay jury.

III. JURY DELIBERATIONS

FOREPERSON'S ROLE; UNANIMITY

I come now to the last part of the instructions, the rules for your deliberations.

When you retire to the jury room, you will discuss the case with the other jurors. You shall permit your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous.

CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

REACHING AGREEMENT

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to the views of the other jurors.

Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is right.

This case has taken time and effort to prepare and try. There is no reason to think it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. If it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the jurors in both the majority and the minority should reexamine their positions to see whether they have given careful consideration and sufficient weight to the evidence that has favorably impressed the jurors who disagree with them. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict, but of course, only if each of you can do so after having made your own conscientious determination. Do not surrender an honest conviction about the evidence simply to reach a verdict.

RETURN OF VERDICT FORM

After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and give the jury officer outside your door a note that states that you are ready to return to the courtroom.

After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open court.

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time. You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.